IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

J U D G M E N T

S.B. CIVIL SECOND APPEAL NO.13/1992
State of Rajasthan & Ors. Vs. Jangir Kaur

Against judgment and order dated 20.11.1991 passed by learned Addl. District Judge No.1, Sri Ganganagar (Camp at Sri Karanpur) in Civil Appeal No. 02/1988 - State of Rajasthan & Ors. Vs. Jangir Kaur.

DATE OF PRONOUNCEMENT OF JUDGMENT :: 5TH January,2006.

PRESENT

HON'BLE MR.JUSTICE SATYA PRAKASH PATHAK

Mr. N. Moolchandani for appellants.
Miss. Suchita Bachhawat for respondent.

BY THE COURT:

This is an appeal under Sec. 100 CPC by the defendants against judgments and decrees passed consecutively by two courts below. The learned Court of Munsif vide its judgment and decree dated 08.01.1988 in Civil Suit No.14/1987 has directed the defendants to supply 4 times water to the

garden of plaintiff-respondent at Sri Karanpur for irrigation and the learned first appellate Court has affirmed the judgment and decree passed by the learned Munsif, Sri Karanpur vide its judgment & decree dated 20.11.1991 in Civil Appeal No.2/1988 – State & Ors. Vs. Jangir Kaur.

Brief facts of the case are that a suit was filed in the Court of Munsif & Judicial Magistrate, First Class, Sri Karanpur by Jangir Kaur, the widow of Late Dayal Singh, stating therein that in Killa No. 1 to 5 of Murabba No.24, Chak No.20-F there lies land of her husband who has expired, which has been entered in her name. It was further stated that the defendants No.1 & 2 issued instructions for supplying 4 time water to the persons maintaining gardens in their lands and also assured verbally about it so acting on their assurances, the plaintiff invested a huge amount and putting hard labour started gardening in the land but water as assured was not supplied rather the same was discontinued.

Before the Court of Munsif, from the side of defendants, the SDO J.S. Saluja presented himself in the Court but no reply was filed on their behalf and ultimately the matter was heard exparte and on 08.01.1988 judgment and decree was passed in Suit No.14/87 in favour of the respondent-plaintiff. Against that, the appellant-defendants preferred an appeal before the Court of Addl. District Judge No.1, Sri Ganganagar, which came to be registered as Civil Appeal No.2/1988, and later on was dismissed on 20.11.1991 affirming the order of Munsif Court by the learned Addl. District Judge No.1, Sri Ganganagar camp at Sri Karanpur.

The appellant-defendants, aggrieved by the judgments and decrees passed by the two courts below, have preferred the present second appeal challenging the same.

The case of the appellant-defendants is that the Chief Engineer, Irrigation issued orders on 05.10.1978 to the effect that no new sanction

will be issued for supplying water to gardens looking to the scarcity of water in the Gang Canal and after that no new sanction for extra-supply of water for garden or fruit orchards was ever granted by the authorities. It is also the case of the appellants that no assurance was ever given about supply of 4 times water to the gardens and no document showing such assurance had been filed by the plaintiff in support of the case even then the learned Court below passed the judgment and decree against appellant-defendants. Poor availability of water was also pleaded and it was stated that water was not available sufficiently even for agriculture purpose so there was no question of supplying water 4 times to the plaintiff-respondent. A reference has also been made to Sec.52 of the Rajasthan Irrigation & Drainage Act in order to show that the said Act bars the jurisdiction of civil courts to pass orders as to the supply of water to any crop shown growing at the time of such order.

It is further case of the appellant-defendants that the learned trial Court has

committed an error in accepting the contentions of plaintiff, which were not supported by any document about giving assurance to the respondent-plaintiff for the purposes of supplying water to her garden 4 times and the learned first appellate Court has not dealt with the objection taken that the suit itself was not maintainable as there is no provision for providing irrigation facility for gardens under the Rajasthan Irrigation & Drainage Act and Rules and that the first appellate Court has also not taken into consideration that no notice under Sec.80 CPC was ever served prior to filing of the suit.

It has been averred that the learned appellate Court has erred in not considering Mr. V.D. Sharma an authorized person to file appeal though he was duly authorized and the application filed by him under Order 6 Rule 17 was not disposed off. It has been reiterated that the respondent-plaintiff did not produce any documentary or oral evidence with regard to supply of excess water or paying charges for 4 times water or any evidence to

show that any assurance was given to supply water at four times.

This Court, after hearing parties on 19.11.1992, while admitting the appeal, framed following issues for decision of this appeal:

(v) Whether the statement of the plaintiff-respondent can be accepted about the fact of giving of any assurance by the departmental authority inspite of the fact that he has not disclosed the name of the authority and the time and place of giving such assurance?

(vi) Whether in view of the order of the Chief Engineer dated 05.10.1978 the excess water can be supplied more so when there is no provision under the Act and Rules for supply of water for the purpose of garden and orchards?

(vii) Whether the plaintiff-respondent ever applied for 4 times supply of water for the purpose of garden to the competent authority which is only the Chief Engineer, Irrigation, Rajasthan?

(viii) Whether the said mandatory order can be passed by the Court to regulate the supply of water which depends upon so many other factors and whether in such a case such type of orders can be passed the compliance of which affects upon other cultivators?

(ix) Whether in view of shortage of water even for agriculture purpose can such order for supply of water for garden be passed?

Heard learned counsel for the parties.

To set the controversy at rest, first it would be beneficial to go through the Rules governing the supply of canal water for fruit gardens in the Gang Canal colony area issued by Irrigation Department, Bikaner State, which received sanction by the Govt. on 20.08.1945, as the land of plaintiff falls in the area where the water supply is through the distributories/channels of Gang Canal. Para 16 of the Rules reads that the grant of additional water for orchards and fruit gardens will be at the discretion of the Chief Engineer, Irrigation Branch, Bikaner State, and no one can claim it as a matter of right while Rule 1 of the said Rules states that total supply of water to be allowed to fruit garden areas will be limited to 1% of the total canal supply at hand or 27

cusses in all. The Chief Engineer (Irrigation) also issued orders on 05.10.1978 to the effect that no new sanction will be issued for supply of water to the gardens looking to the scarcity of water in the Gang Canal.

Now, I propose to deal with the substantial questions of law. As the questions formulated are inter-linked with each other, they are being decided together.

The respondent-plaintiff had filed the suit for mandatory injunction and the substance of the plaint was that plaintiff should be supplied water for her garden 4 times a day. The very nature of the suit will make it clear that such a relief is too far to seek. Supply of water is not dependent on only one factor but is dependent on so many other circumstances such as availability of water, distribution of water amongst farmers etc. and it is not necessary that the person filing a suit for mandatory injunction must get supply of

water 4 times a day, 8 times a day or so, leaving others at the mercy of the department to supply water in the manner they so choose. The another aspect of the matter is that in the trial Court on the date of hearing exparte proceedings were ordered on 22.08.1987 and thereafter subsequently after recording the statement of the plaintiff the suit was decreed in a mechanical way. The Court was saddled with a great responsibility in the absence of other side and was required to see as to whether the suit in the entirety was liable to be decreed or not. Mere observance that the defendants in the suit were not represented and the statement of the plaintiff was sufficient to decree the suit, in my considered opinion, is not sufficient to decree the suit. The trial Court was required to look into the matter objectively and to find out on the basis of material placed on record that the suit was liable to be decreed or not. What has come on record in the statement of the plaintiff as witness is that she on the assurance of the

defendants maintained the garden but the defendants subsequently stopped the supply of water, therefore, it became essential for her to file the suit for getting an injunction mandatory in nature. She has nowhere stated as to when and on what date she met the defendants and requested them to supply 4 times water in a day. It has also neither come on record nor has been specifically stated by the plaintiff as who out of the defendants assured her to supply 4 times water in a day. Merely on the basis of a vague statement made in the absence of material on record, I find it difficult to be in agreement with the findings recorded by the trial Court that in view of the statements recorded by the trial Court the suit was liable to be decreed. The Rules, which have been referred to hereinabove, clearly indicate that the supply of water depends upon so many things and it is a policy that distribution of water amongst the fathers is made in such a manner that the others may not have any grievance. It is also pertinent to mention here that the Chief Engineer, Irrigation

issued orders on 05.10.1978 that no new sanction will be issued for supplying water to gardens looking to the scarcity of water in the Gang Canal and thereafter no new sanction for extra-supply of water for garden or fruit orchards was granted by the authorities. It is also pertinent to mention here that Sec. 52 of the Irrigation & Drainage Act bars the jurisdiction of civil courts to pass orders as to the supply of water to any crop shown growing. I am not expressing any opinion as to the interpretation of the Section referred to above but it is sufficient to say that all these questions are required to be gone into by the trial Court as well as by the appellate Court. The documents relied on by the learned trial Court Ex.1 & 2 are in connection with sanction of mutation etc. which have nothing to do with the supply of water to be made by the defendants. It is strange that the appellate Court after making mention of certain facts in the judgment has observed that since the exparte proceedings were drawn on the basis of the statement of plaintiff the suit was correctly

decreed. It appears that infact the appellate Court without appreciating the entire matter and even without taking care of the grounds stated in the memo of appeal has affirmed the judgment and decree of the trial Court. It is true that in the present case there are concurrent findings of two Courts below, but to say that the concurrent findings are sufficient to reach to a conclusion that the second appeal filed under Sec.100 CPC is liable to be dismissed, is not plausible. As discussed above, I do not find the findings to be concurrent in the eye of law.

The contention of the learned counsel for the respondent that in view of concurrent findings of fact, in absence of any material brought by the defendants, the suit was liable to be decreed, is not tenable as the plaintiff respondent was not able to substantiate the suit by the statement made. Even in the statement of plaintiff, no material has come which make her entitle for the relief sought for. It is a case where there was

no material on record to decree the suit. Therefore, in my considered opinion, the statement of the plaintiff, recorded in the trial Court being vague, is not of any help to her and on that basis it cannot be presumed that any assurance was given to her on behalf of the defendants to supply water 4 times a day.

On a careful consideration of the matter, it is clear that both the courts below have not properly appreciated the evidence on record and, therefore, the findings arrived at by them are totally perverse, illegal and unsustainable in law as the same are not based on sufficient and sound reasonings. The courts below crept in error and passed unjust and unreasonable judgments and decrees calling interference by this Court which are liable to be quashed and set aside. Otherwise also, I find it my duty to reverse the error committed by the learned trial Court and upset the same notwithstanding the fact that it has been affirmed by the appellate Court.

In view of the foregoing discussions, I am of the firm view that the judgments and decrees of courts below are wholly perverse and illegal inasmuch as the courts below have completely failed to consider the matter in its entirety and on such findings the judgments and decrees passed are liable to be quashed. The questions framed in this appeal are answered accordingly.

In the result, the appeal is allowed, the judgments and decrees passed by the two courts below are quashed and set aside and the suit of the plaintiff is dismissed.

(SATYA PRAKASH PATHAK)J.

/jpa